

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JULIE BURGESS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:22-cv-1029-MTS
	)	
RUSHI & KHUSHI LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff Julie Burgess’s Motion for Default Judgment, Doc. [5], under Federal Rule of Civil Procedure 55(b)(1), against Defendant Rushi & Khushi LLC. For reasons discussed below, the Court denies the Motion without prejudice.

Plaintiff filed her Motion prematurely. The entry of default and default judgment are governed by Rule 55 of the Federal Rules of Civil Procedure. The clerk is required to enter default when a party fails to defend against another party’s claims, and that failure is shown by affidavit. Fed. R. Civ. P. 55(a). Such an entry of default is a prerequisite to obtaining a default judgment. *See, e.g., Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998) (explaining “entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)”). Plaintiff filed her motion for default judgment on November 21, 2022, but the Clerk of Court did not enter default as to Defendant until April 4, 2023. Doc. [7]. Therefore, Plaintiff’s motion for default judgment is premature. *See Graham v. Nat’l Web Design LLC*, 20-cv-1575-KMM-BRT, 2022 WL 190760, at \*2 (D. Minn. Jan. 21, 2022) (denying Plaintiff’s motion for default judgment on this basis); *Precinct, Inc. v. MWS, LLC*, 4:13-cv-2391-SNLJ, 2014 WL 3734276, at \*1 (E.D. Mo. July 28, 2014) (“Plaintiff’s motion for default judgment must be denied on the basis that an entry of

default from the Clerk of the Court pursuant to Rule 55(a) is a prerequisite to and must precede the grant of a default judgment under Rule 55(b).”).

In addition to this procedural error, the Court notes Plaintiff’s papers do not comply with Rule 55(b).<sup>1</sup> *See* Fed. R. Civ. P. 55(b). Thus, the Court will deny Plaintiff’s motion without prejudice so that she can re-file an adequate motion for default judgment.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff’s Motion for Default Judgment, Doc. [5], is **DENIED without prejudice**.

Dated this 6th day of April, 2023

  
MATTHEW T. SCHELP  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> *See, e.g.*, Doc. [5] (seeking default judgment on Count I for “the monetary value of attorneys’ fees and court costs to be filed by affidavit after entry of default”).